

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

PATRICK SHEEHEY; PATRICIA SHEEHEY; RAYNETTE NALANI AH CHONG; SHERRY CAMPAGNA; MICHAEL HOLM; and TIARE HOLM, *individually, and on behalf of a class of Hawai'i-licensed resource families;* B.S.; and T.B., a Minor, by her Next Friend N.A., *individually and on behalf of a class of persons similarly situated;*

Plaintiffs,

vs.

STATE OF HAWAII,

Defendant.

CIVIL NO. 14-1-1709-08 VLC  
(Civil Action; Contract; Class Action)

**SETTLEMENT AGREEMENT**

**HEARING ON PRELIMINARY  
APPROVAL OF SETTLEMENT**

JUDGE: Hon. Virginia L. Crandall  
DATE: March 24, 2017

**STATE LAWSUIT CLASS ACTION SETTLEMENT AGREEMENT**

This State Lawsuit Class Action Settlement Agreement (“**State Settlement Agreement**”) is entered into by and between Patrick Sheehey, Patricia Sheehey, Raynette Nalani Ah Chong, Sherry Campagna, Michael Holm, Tiare Holm, B.S., and T.B., a minor by her next friend, N.A. (collectively, the “**Named Plaintiffs**”), on behalf of themselves and members of the Classes defined in this Agreement (collectively, “**Plaintiffs**”), on the one hand, and the State of Hawaii, including its departments, agencies, officials, and employees (collectively the “**State**”), on the other hand. Named Plaintiffs and the State are collectively referred to as the “**Parties**.”

Subject to Court approval as required by Rule 23 of the Hawai'i Rules of Civil Procedure (“**HRCP**”), the Parties hereby stipulate and agree that, in consideration of the mutual promises, covenants, and consideration set forth in this State Settlement Agreement, the above-captioned action (“**State Lawsuit**”) shall be settled and compromised in accordance with the terms herein.

The Parties acknowledge and agree that although this State Settlement Agreement sets forth the terms and conditions by which the State Lawsuit will be settled, this State Settlement Agreement is part of a larger settlement that includes the Federal Lawsuit (defined below), and that unless

both Lawsuits settle on the terms set forth in their respective settlement agreements, neither Lawsuit will be settled.

The Parties further acknowledge and agree that the settlement of the State Lawsuit and the Federal Lawsuit is contingent on the enactment of legislation by the Hawaii Legislature to authorize the appropriation of funds to make the payments described herein and in the Federal Settlement Agreement. If such legislation is not enacted on or before the Legislation Enactment Deadline as defined in this State Settlement Agreement and the Federal Settlement Agreement, unless such date is mutually agreed to be extended by the parties to both Agreements, this State Settlement Agreement shall automatically become null and void, trial in the Federal Lawsuit shall resume, and the State Lawsuit shall also proceed.

## **RECITALS**

WHEREAS, on August 7, 2014, a Complaint for Damages against the State of Hawaii was filed in an action entitled *Sheehey, et al. v. State of Hawaii*, Civ. No. 14-1-1709-08 VLC (the “State Lawsuit”), a First Amended Complaint for Damages was filed on February 6, 2015, and a Second Amended Complaint for Damages was filed on June 8, 2015; and

WHEREAS, the Second Amended Complaint in the State Lawsuit is pled as a class action lawsuit and asserts claims on behalf of three general categories of people:

- a. individuals who have taken in abused or neglected children by serving as resource caregivers (foster parents) for such children, by adopting such children (these children are referred to under the law as “children with special needs”), or by becoming the permanent custodians/legal guardians for such children, and who were entitled to receive foster care maintenance payments, adoption assistance, or permanency assistance under state or federal law (collectively, referred to herein as the “**Parent Group1;**
- b. former foster youth who receive higher education board allowance payments from the Hawaii Department of Human Services (“**DHS**”) (collectively, the former foster youth are referred to herein as the “**Higher Education Group**”); and

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<sup>1</sup> Because of the application of the statute of limitations to any claims by the Parent Group, the Parties acknowledge that the Court presiding over the State Lawsuit, if presented with the issue, would likely have limited the people in the Parent Group to those adults who have provided care to foster children, adoptive children with special needs, or children in permanent custody/legal guardianships on or after August 7, 2012.

c. foster children, adoptive children with special needs, and children in permanent custody/legal guardianships who were under the age of 20 on August 7, 2014 (collectively referred to herein as the “**Beneficiary Group**”); and

WHEREAS, the Second Amended Complaint alleges that the foster care maintenance payments paid by the State (through DHS) to members of the Parent Group who are resource caregivers were and are inadequate under state and federal law, and are flawed because they fail to take into account Hawaii’s cost of living; and further alleges that if the monthly payment rate set in 1990 (and not changed until 2014) had been adjusted to keep up with inflation, the required foster care maintenance payment at the time of the filing of the Complaint would exceed \$950 per month; and

WHEREAS, because by DHS policy the amount of the foster care basic board rate is also the amount paid by the State to adoptive parents of children with special needs, legal guardians/permanent custodians and former foster youth receiving higher education benefits, the Second Amended Complaint also alleges that the payments made to the remaining members of the Parent Group and payments made to the Higher Education Group are also inadequate<sup>2</sup>; and

WHEREAS, the Second Amended Complaint asserts seven claims for relief, based on the following allegations

- a. failure to pay amounts required to be paid under written agreements entered into by the State and individual members of the Parent Group (which agreements require the State to make certain payments to these individuals), resulting in damages suffered by individual members of the Parent Group equal to the shortfall between the amounts required to be paid and the amounts actually paid;
- b. failure to pay amounts required to be paid under written agreements entered into by the State and individual members of the Parent Group, resulting in damages to the Beneficiary Group (who are the intended beneficiaries of the written agreements described in the first claim for relief);
- c. violation by the State of Chapter 17-1617 of the Hawaii Administrative Rules by failing to pay foster care maintenance payments sufficient to comply with its obligations under the Adoption Assistance and Child Welfare Act of 1980, as amended, codified as Title IV-E of the Social Security Act, 42 U.S.C. §§ 670-679c (the “**Child Welfare Act**”), resulting in damages to resource caregivers and foster children;

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<sup>2</sup> Members of the Beneficiary Group do not directly receive maintenance payments from the State.

- d. violation by the State of Chapter 17-1620 of the Hawaii Administrative Rules by failing to pay adequate monthly adoption assistance payments as a result of DHS' policy of limiting its adoption assistance payments to the amount of its foster care maintenance payment rates;
- e. violation by the State of Chapter 17-1621 of the Hawaii Administrative Rules by failing to pay adequate permanency assistance payments as a result of DHS' policy of limiting permanency assistance payments to the amount of its foster care maintenance payment rates;
- f. violation by the State of Haw. Rev. Stat. § 346-17.4 by failing to pay adequate higher education board payments as a result of DHS' policy and practice of limiting higher education board payments authorized by Section 346-17.4 to the amount of its foster care maintenance payment rates, resulting in damages to eligible members of the Higher Education Group equal to the shortfall in payments; and
- g. failure by the State to assure the continuing appropriateness of its foster care maintenance payment rates by conducting periodic reviews but knowingly failing to establish adequate payment rates, resulting in the denial of Plaintiffs' rights under federal and state law; and

WHEREAS, the Second Amended Complaint seeks damages from the State for the alleged contract breaches and statutory and rules-based violations described therein; and

WHEREAS, Raynette Ah Chong, on behalf of a separate putative class of Hawaii-licensed foster care providers, filed a class action complaint for declaratory and permanent injunctive relief against Patricia McManaman,<sup>3</sup> in her official capacity as the Director of the Hawaii Department of Human Services, in an action entitled *Ah Chong v. McManaman*, Civ. No. 13-00663 LEK-KSC, in the United States District Court for the District of Hawai'i (the "Federal Lawsuit"), on December 3, 2013, as amended on April 30, 2014; and

WHEREAS, some of the issues in this State Lawsuit overlap with the issues in the Federal Lawsuit (primarily, whether DHS provides foster care maintenance payments adequate to cover the cost of and the cost of providing basic necessities to children in Hawaii's foster care system and whether DHS' periodic review of the foster care maintenance payments result in the establishment of appropriate payment rates); and

WHEREAS, from approximately 1990 until June 2014, Hawaii's basic foster board rate was \$529 per child, per month for all foster children; and

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<sup>3</sup> Pankaj Bhanhot has been substituted as defendant in the Federal Lawsuit pursuant to Federal Rules of Civil Procedure ("FRCP") Rule 25(d).

WHEREAS, effective July 1, 2014, DHS increased the basic foster care board rate (“Basic Board Rate”), based on the age of the foster child, to: \$576 (children ages 0-5); \$650 (children ages 6-11); and \$676 (children ages 12+); and

WHEREAS, in addition to the Basic Board Rate, there are additional payments and benefits available for the care of foster children (“Foster Care Related Payments and Benefits”), depending on the needs of the child; and

WHEREAS, DHS’ position is that its existing system of a Basic Board Rate plus Foster Care Related Payments and Benefits complies with the Child Welfare Act, and DHS also takes the position that having certain payments or benefits available only if the child needs them, and requiring resource caregivers (foster parents) to apply for certain payments and benefits complies with the Child Welfare Act; and

WHEREAS, Plaintiffs’ position is that the DHS’ Basic Board Rates are still inadequate because they were set in 2014 using a 2011 government (USDA) study on the cost of raising children across the United States (and used cost estimates for families living in the Urban West region rather than Hawai‘i), and because the Basic Board Rates utilized less than 100% of the estimated costs of food; housing; and miscellaneous expenses rather than all eight items listed in the Child Welfare Act; and

WHEREAS, Plaintiffs position is that DHS’ system of providing Foster Care Related Payments and Benefits is inadequate because the payments and benefits (1) are not provided to all foster children, (2) are subject to eligibility requirements, (3) are subject to availability of funds, and (4) many foster families simply are not aware that these additional payments and benefits exist or that DHS is required to cover certain costs that DHS claims are covered through the Foster Care Related Payments and Benefits; and

WHEREAS, the Parties do not agree on (1) the extent of DHS’ obligations under the Child Welfare Act; (2) the sufficiency of the Basic Board Rate; (3) the value or adequacy of the Foster Care Related Payments and Benefits; (4) whether DHS provides adequate information to resource caregivers regarding the availability of the Foster Care Related Payments and Benefits; (5) whether DHS provides adequate opportunity for resource caregivers to apply for the Foster Care Related Payments and Benefits; and (6) whether DHS conducts periodic reviews that assure the continuing appropriateness of its foster care maintenance payment rates; and

WHEREAS, because of the overlapping issues in the State Lawsuit and the Federal Lawsuit, the State Lawsuit was placed on hold while the parties in the Federal Lawsuit extensively litigated the issue of the adequacy of DHS’ foster care maintenance payments (among other things, engaging in substantial

discovery, including production of thousands of pages of documents, depositions, and expert discovery); and

WHEREAS, in December 2015, the Federal Court ruled that federal law did not prohibit DHS' system of providing foster care maintenance payments through a Basic Board Rate plus additional Foster Care Related Payments and Benefits, and that the foster care maintenance payment system could possibly be sufficient if DHS provides resource caregivers with sufficient information about the Foster Care Related Payments and Benefits and sufficient opportunities to apply for them; and

WHEREAS, the Federal Court also ruled that the "shelter" expense in the Child Welfare Act's definition of "foster care maintenance payments" need not include mortgage payments, rent, property taxes, or other similar expenses;<sup>4</sup> and

WHEREAS, the Federal Court did not rule on certain key issues, and saved them for trial in the Federal Lawsuit, including:

- (1) whether DHS adequately conducts periodic reviews of the foster care maintenance payments to assure their continuing appropriateness, as required by law;
- (2) whether DHS provided and provides adequate information to resource caregivers about the Foster Care Related Payments and Benefits;
- (3) whether DHS provided adequate opportunities to resources caregivers to apply for the Foster Care Related Payments and Benefits;

and, if the Court answered (2) and (3) in the affirmative, then

- (4) whether DHS' foster care maintenance payment system of Basic Board Rate-plus-Foster Care Related Payments and Benefits adequately covered the cost of (and the cost of providing) the basic necessities of children in Hawaii's foster care system, as required by the Child Welfare Act; and

WHEREAS, Plaintiffs in the Federal Lawsuit strenuously disagreed with the Federal Court's rulings and strongly believe that these rulings would be reversed on appeal; and

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<sup>4</sup> It is Defendant's position that the Federal Court's ruling on "shelter expense" significantly lessened Plaintiffs' chances of prevailing on their assertion that DHS does not pay enough for the items enumerated in the Child Welfare Act because, while the ruling confirmed that DHS need not pay for rent, mortgage, or similar expenses, DHS' calculation of the Basic Board Rates in fact took such costs into account because a large portion of the "housing" category of the USDA report includes such costs.

WHEREAS, the State's position is that if Plaintiffs in the Federal Lawsuit could not show that the foster care maintenance payments were inadequate, then the Parent Group and Higher Education Group in the State Lawsuit also could not show that their respective payments were inadequate; and

WHEREAS, the State's position is that discovery in Federal Lawsuit indicated that even if resource caregivers could prove that the foster care maintenance payments were inadequate, the Beneficiary Group were unlikely to be able to prove damages separate from the resource caregivers (because resource caregivers likely supplemented the shortfall in the State's alleged inadequate foster care maintenance payments from their own income in order to lessen the damages suffered by their foster, adoptive, and permanency placements due to the alleged inadequate payments); and

WHEREAS, the State believes it has meritorious defenses, including sovereign immunity, failure of the Plaintiffs to state a claim upon which relief can be granted, statute of limitations, and lack of standing; and

WHEREAS, the ultimate outcome of the Federal Lawsuit was uncertain and the Parties disagree on the impact and effect of the Federal Court's rulings on the State Lawsuit; and

WHEREAS, shortly before trial in the Federal Lawsuit was scheduled to commence, the Parties engaged in settlement discussions through their respective counsel, with the assistance of the Honorable Kevin S.C. Chang, Magistrate Judge of the United States District Court for the District of Hawai`i; and

WHEREAS, the State insists that both the Federal Lawsuit and State Lawsuit must be resolved together; and

WHEREAS, the State denied and continues to deny any and all liability and damages to Plaintiffs with respect to the claims or causes of action asserted in the State Lawsuit and the Federal Lawsuit, but nonetheless acknowledges that bringing the cases to a close now through settlement—rather than after years of litigation and appeals, with uncertain outcomes and concomitant attorneys' fees and costs that would be incurred by both sides—would help move the Parties toward a better working relationship for the benefit of all children in Hawaii's foster care system, and the relief Defendant agrees to provide under this Federal Settlement Agreement is offered solely as a compromise, and not because Defendant believes DHS has any obligation to Plaintiffs to provide said relief; and

WHEREAS, in light of the Federal Court's rulings and their uncertain impact on the State Lawsuit, the opinions of the parties' experts, the attorneys' fees and costs that all Parties would continue to expend, and the interests of bringing these matters to a resolution, the Parties and counsel agree that a

limited, one-time payment to be made only to certain Settlement Class Members (the Payment Recipients), is an appropriate means of settling this case; and

WHEREAS, Plaintiffs and their counsel have analyzed, evaluated, and extensively litigated the merits of the claims made against Defendants in the State Lawsuit and the Federal Lawsuit and the impact of settlement (as well as the impact of not settling) on Plaintiffs, the members of the Federal Class, and members of the putative State Class and—recognizing the substantial risks of continued litigation, including the possibility that the Federal Lawsuit, if not settled now, might result in an outcome that is less favorable or that a fair and final judgment may not occur for several years—Plaintiffs and their counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate, and that this Agreement is in the best interests of all the members of the putative class; and

WHEREAS, the Parties have reached a proposed comprehensive settlement of the State and Federal Lawsuits and, on August 26, 2016, the Parties in the State Lawsuit and the parties in the Federal Lawsuit agreed to the essential terms of a valid and binding settlement agreement, which was placed on the record before the Honorable Kevin S.C. Chang at a hearing held in the Federal Lawsuit;

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this State Settlement Agreement, as well as the good and valuable consideration provided for herein, the Parties hereto agree to a full and complete settlement of the State Lawsuit on the following terms and conditions:

## **TERMS OF AGREEMENT**

### **I. Definitions**

A. In addition to the definitions contained in the foregoing Recitals, the following definitions shall apply:

1. **“Administration Costs”** shall mean only the reasonable cost to typeset, print, and mail the Class Notice to the Settlement Classes; the reasonable cost to process requests to opt-out of the Settlement Classes; and the reasonable cost to prepare and mail Settlement Payments to the Payment Recipients.

2. **“Amount Payable to Each Payment Recipient”** shall mean the amount prescribed in section IV.b. below.

3. **“Class Counsel”** shall mean:

Alston Hunt Floyd & Ing, 1001 Bishop Street, Suite 1800,  
Honolulu, Hawaii 96813; and

Hawaii Appleseed Center for Law and Economic Justice, 119  
Merchant Street, Suite 605, Honolulu, Hawaii 96813.

Plaintiffs' counsel shall request that the Court appoint them as class counsel pursuant to HRCP Rule 23 to represent the Settlement Classes for purposes of this State Settlement.

4. **“Class Notice”** shall mean a document substantially in the form of the Notice attached hereto as Exhibit 1 which has been agreed to by the Parties subject to Court approval and which the Notice Administrator will mail to each Settlement Class Member explaining the terms of the Settlement, and the opt-out and objection processes.

5. **“Class Settlement Amount”** shall mean an amount no greater than \$2,341,103.10. The Class Settlement Amount is based on \$35 per month per foster child, child in permanent custody/legal guardianship, adoptive child with special needs, and former foster youth in the higher education program, for whom DHS made monthly payments for the time period July 1, 2013 to June 30, 2014 (which is the State’s 2014 fiscal year), pro rated for actual days in care. The Class Settlement Amount is the maximum amount the State is required to pay under this State Settlement Agreement.

6. **“Contact Information”** shall mean the most current information DHS then has available of a Settlement Class Member’s name and mailing address.

7. **“Court”** shall mean the Circuit Court of the First Circuit, State of Hawaii, the Honorable Virginia L. Crandall, presiding (or her successor).

8. **“Day”** shall mean a calendar day.

9. **“Fairness Hearing”** shall mean the hearing on the Motion for Final Approval of Settlement, currently set for June 24, 2017.

10. **“Federal Settlement Agreement”** shall mean the Federal Lawsuit Class Action Settlement Agreement that embodies the terms of the settlement of the Federal Lawsuit.

11. **“Federal Court”** shall mean the United States District Court for the District of Hawaii. The presiding Judge in the Federal Lawsuit is the Honorable Leslie E. Kobayashi.

12. **“Final Approval”** shall mean the occurrence of the following:

Following the Fairness Hearing, the Court has issued an order approving the Settlement, and

- i. The time for appellate review and review by petition for certiorari has expired, and no notice of appeal has been filed; or
- ii. If appellate review or review by petition for certiorari is sought, after any and all avenues of appellate review have been exhausted, and the order approving settlement has not been modified, amended, or reversed in any way.

13. **“Legislation Enactment Deadline”** shall mean June 30, 2017, or such later time period as the Parties may agree to in writing.

14. **“Monthly Adoption Assistance Payments”** shall mean monthly subsidy payments made by DHS to adoptive parents of children with special needs under 42 U.S.C. § 673(a) and/or under Haw. Admin. R. § 17-1620-9.

15. **“Monthly Foster Care Maintenance Payments”** shall mean monthly payments made by DHS to licensed resource caregivers under 42 U.S.C. § 672 and/or under Haw. Admin. R. § 17-1617-3.

16. **“Monthly Higher Education Payments”** shall mean monthly payments made by DHS to or on behalf of eligible former foster youth under Haw. Rev. Stat. § 346-17.4

17. **“Monthly Permanency Assistance Payments”** shall mean monthly payments made by DHS to legal guardians or permanent custodians under 42 U.S.C. § 673(d) or Haw. Admin. R. § 17-1621-9.

18. **“Motion for Final Approval of Settlement”** shall mean the motion to be filed by Plaintiffs, the State, or the Parties jointly, seeking the Court’s final approval of the Settlement, which shall include a report on requests to opt-out of and on objections to the Settlement.

19. **“Named Plaintiffs”** shall mean the named plaintiffs in the State Lawsuit: Patrick Sheehey, Patricia Sheehey, Raynette Nalani Ah Chong, Sherry Campagna, Michael Holm, Tiare Holm, B.S., and T.B., a minor, by her Next Friend N.A.

20. **“Net Settlement Amount”** shall mean the Class Settlement Amount minus the combined total of any attorneys’ fees and costs approved by the Court and actual Administration Costs. The Net Settlement Amount is the amount that shall be distributed to Payment Recipients on a pro rata per child/per day basis pursuant to section IV, below.

21. “**Notice Administrator**” shall mean DHS (or, if DHS is unable or unwilling to perform the duties of the Notice Administrator, such other mutually agreed-upon entity). The Notice Administrator shall be responsible for sending the court-approved Class Notices to the Settlement Classes.

22. “**Opt-Out Letter**” refers to a written request to opt-out or exclude oneself from the Settlement sent by any Settlement Class Member who elects to be excluded from a Settlement Class. A Settlement Class Member must submit a valid and timely Opt-Out Letter to exclude himself or herself from the Settlement and from the release of claims pursuant to this Settlement.

23. “**Parties**” shall mean the Named Plaintiffs, Settlement Class Members, and the State.

24. “**Payment Administrator**” shall mean the Hawaii Department of Accounting and General Services, the agency that the Parties agree will issue checks for Settlement Payments to each Payment Recipient under this State Agreement (unless DAGS determines the funds should be distributed through some other entity)

25. “**Payment Recipients**” shall mean those Settlement Class Members who have not opted out of the Settlement and who are entitled to receive a payment pursuant to section IV below.

26. “**Preliminary Approval**” shall mean that the Court has entered a Preliminary Approval Order or orally granted Plaintiffs’ Motion for Preliminary Approval.

27. “**Preliminary Approval Order**” shall mean an order entered by the Court substantially in the form attached hereto as Exhibit 2 preliminarily approving the terms set forth in this State Agreement, including the manner and timing of providing notice to the Classes, the time period for opting out or for submitting objections, and the date, time and location for a Fairness Hearing.

28. “**Releasees**” shall mean the State of Hawaii, DHS, the Director of Human Services, other Hawaii departments, agencies, directors, officers, agents, employees, representatives, insurers, attorneys, administrators, and all other persons acting on behalf of the State of Hawaii.

29. “**Settlement**” shall mean the compromise and settlement of the State Lawsuit as contemplated by this State Agreement.

30. “**Settlement Classes**” shall mean the two classes identified for the purposes of this State Agreement: the Parent Settlement Class and the Higher Education Settlement Class, subject to class certification by this Court.

31. “**Settlement Class Members**” shall mean the members of the Settlement Classes.

32. “**Settlement Payment**” shall mean the pro rata portion of the Net Settlement Amount that is to be paid to each Payment Recipient pursuant to this State Agreement.

33. “**State Settlement Agreement**” shall mean this State Lawsuit Class Action Settlement Agreement.

## **II. Settlement Classes**

There shall be two Settlement Classes: the Parent Settlement Class, and the Higher Education Settlement Class. Although the Second Amended Complaint does not set forth a Higher Education Class, the Higher Education class is separately established because the interests of the Higher Education Settlement Class are different from the interests of the putative class of beneficiaries pleaded in the Second Amended Complaint in that the Higher Education Settlement Class members are likely to be Payment Recipients.

### **1. Parent Settlement Class**

The Parent Settlement Class shall consist of

(a) all licensed resource caregivers in Hawaii (foster parents) who received Monthly Foster Care Maintenance Payments from DHS from August 7, 2012 (two years prior to the filing of the State Lawsuit) through February 28, 2017; and

(b) all legal guardians and permanent custodians who received Monthly Permanency Assistance from DHS from August 7, 2012 through February 28, 2017; and

(c) all adoptive parents of children with special needs who received Monthly Adoption Assistance Payments from DHS from August 7, 2012 through February 28, 2017.

The representatives of the Parent Settlement Class shall be Patrick Sheehey, Patricia Sheehey, Raynette Nalani Ah Chong, Sherry Campagna, Michael Holm, and Tiare Holm. Plaintiffs’ counsel shall seek the Court’s appointment of these individuals to be the representatives of the Parent Settlement Class.

### **2. Higher Education Settlement Class**

The Higher Education Settlement Class shall consist of all individuals who received Monthly Higher Education Payments from DHS from August 7, 2012 (two years prior to the filing of the State Lawsuit) February 28, 2017.

The representative of the Higher Education Settlement Class shall be Brittany Sakai, the individual identified in the Second Amended Complaint by the initials “B.S.” Class Counsel shall seek the Court’s appointment of Ms. Sakai to be the representative of the Higher Education Settlement Class.

The Parties and Class Counsel agree that, if approved, certification of the Settlement Classes is a conditional certification for settlement purposes only, and if for any reason the Court does not grant final approval of the Settlement, or if for any other reason the Settlement does not become effective, the certification of the Settlement Classes for settlement purposes shall be deemed null and void without further action by the Court or any of the Parties, each Party shall retain their respective rights and shall be returned to their relative legal positions as they existed prior to execution of this State Settlement Agreement, and neither this Agreement nor any of its accompanying exhibits or any orders entered by the Court in connection with this Agreement shall be admissible or used for any purpose in the State Lawsuit or the Federal Lawsuit.

The Parties and Class Counsel agree that, if approved, certification of the Settlement Classes for settlement purposes is in no way an admission by the State that class certification is proper in any other litigation against the State.

### **III. Legislation**

The Parties agree that this State Agreement is contingent on the enactment of legislation by the Hawaii Legislature to authorize the appropriation of monies to fund the Class Settlement Amount in order to fund the Settlement Payments to the Payment Recipients pursuant to this State Agreement. The Parties agree that enactment of this legislation is material and essential to this Agreement and that if such legislation is not enacted into law by the Legislation Enactment Deadline, unless such date is mutually agreed by the Parties in writing to be extended, the global settlement of the State Lawsuit and the Federal Lawsuit shall automatically become null and void, trial in the Federal Lawsuit shall commence, and the State Lawsuit shall also proceed. In the event this State Settlement Agreement becomes null and void, nothing herein may be used against any Party for any purpose.

### **IV. Payments**

1. Subject to other terms and conditions of this State Settlement Agreement, and in consideration of the releases and dismissals set forth in this Agreement, and subject to Court approval, the State agrees that the Class Settlement Amount shall be a maximum of \$2,341,103.10, which shall be paid as follows:

- a. Attorneys’ fees and costs approved by the Court and Administration Costs shall first be deducted from the Class Settlement Amount to determine the Net Settlement Amount.

b. The Net Settlement Amount shall be paid to the following individuals who have not validly and timely opted out of this Settlement in the following amounts: those members of the Parent Settlement Class and the Higher Education Settlement Class who received monthly foster care maintenance payments, monthly adoption assistance payments, monthly permanency assistance payments, or monthly higher education payments from DHS during the time period July 1, 2013 to June 30, 2014, prorated by actual days that the foster child, adoptive child, or child in permanent placement/legal custody was in care or a young adult was receiving higher education payments. The records of DHS shall be the source of information to determine which Settlement Class Members are eligible to receive payments under this State Agreement. The individuals eligible to receive payments pursuant to this sub-paragraph are referred to as the Payment Recipients. In the event a child was placed in the care of more than one person (e.g., a married couple) at a given time, nevertheless notice shall only be provided and any payments shall be made solely to the individual who is listed in DHS' records as the payee for that household (i.e., the person to whom checks are made when made to that household). Negotiation of the payment check by one shall constitute a full and final discharge of the State's responsibility to both persons in that household.

c. Payment checks issued to Payment Recipients pursuant to this State Agreement shall remain negotiable for the amount of time stated on the check. Any checks not negotiated within the time stated on the check will be subject to DAGS' usual procedures for handling uncashed checks. Payment Recipients who fail to negotiate their check(s) in a timely fashion shall, like all Settlement Class Members who did not validly and timely opt out of the Settlement, remain subject to the terms of the Settlement, including the releases set forth herein.

2. Other than the Settlement Payments described in sub-paragraph IV.1.b, above, no other payments to Settlement Class Members shall be made. ***In other words, there are members of the Settlement Classes who will not receive any payments under the terms of this Settlement.***

## **V. Releases**

The Plaintiffs, including all Settlement Class Members, hereby release, acquit, and discharge Releasees from any and all claims, causes of action, rights, obligations, liabilities, penalties, demands, damages, costs (other than those costs to be paid pursuant to this State Agreement), requests for

declaratory relief, or requests for injunctive relief of any and every kind that were alleged, sought, or litigated, or that could have been alleged sought, or litigated against the State in the State Lawsuit.

## **VI. Attorneys' Fees and Costs**

1. No later than the date of the filing of the Motion for Preliminary Approval or by such date as the Court directs, Class Counsel may file a motion for an award of attorneys' fees and costs, which shall be paid from the Class Settlement Amount. Class Counsel may include the request for fees and costs within the Motion for Preliminary Approval. The State shall not oppose Class Counsel's application for an award of attorneys' fees and costs so long as it does not exceed 20% of the Class Settlement Amount, which amount is intended to cover all attorneys' fees and costs necessary to settle the State Lawsuit and administer this Settlement. The amount of attorneys' fees and costs that may be requested by Class Counsel is based on the agreement between Class Counsel and Plaintiffs ("Retainer Agreement"), a true and correct copy of which is attached as Exhibit 3, and does not exceed said agreement in that it reflects 20% of the Class Settlement Amount, whereas the Retainer Agreement expressly sets 25% of the total recovery as the presumptive "benchmark" against which the value of Class Counsel's services is to be evaluated. See Exhibit 3 at Statement of Client Service and Billing Policies in Contingency Litigation Matters at Section A.

2. Class Counsel agree that they are responsible for allocating the attorneys' fees and costs approved by the Court among themselves and any other counsel that may have any other agreement with them. Class Counsel warrant and represent that there are no liens on the amounts to be paid pursuant to the terms of this State Agreement and that no assignments of the claims to be released or the attorneys' fees and costs to be paid pursuant to this State Agreement have been made or attempted.

In addition to class member relief, Named Plaintiffs may request approval to be provided reasonable service awards for themselves and former named plaintiff T.B. in recognition of the services each rendered on behalf of the class ("Service Award"). These Service Awards are intended to recognize the Named Plaintiffs for the extensive services they performed for the class, the time they spent on this case, and the risks they assumed in connection with this litigation. The amount of the Service Awards will be deducted from the Court's award of attorneys' fees and costs to Class Counsel. In other words, the Service Awards will not reduce the Net Settlement Amount. Defendant will not in any way be responsible for making any service payments or other payments to the Named Plaintiffs.

3. In the event the Court does not approve in full the amount requested by Class Counsel for attorneys' fees and costs, that finding shall not

be a basis for rendering the entire Settlement or this State Settlement Agreement null, void, or unenforceable.

## **VII. Court Approval of Settlement; Processes for Settlement Class Members to Opt-Out of or Object to Settlement**

1. **Motion for Preliminary Approval.** Plaintiffs shall file a motion for preliminary approval by the Court of the Settlement and this State Settlement Agreement at such time as the Court may direct, and attach a copy of this State Settlement Agreement and such other documents the Parties determine are necessary for the Court's consideration. The motion shall request preliminary approval of the Settlement, the State Settlement Agreement, and the Class Notice, and shall request that the Court certify the Settlement Classes, appoint the Class Representatives and Class Counsel, and specify the procedure required for the Court's final consideration of the Settlement, including the scheduling of the Fairness Hearing. The motion for preliminary approval may, but need not, include Class Counsel's request for attorneys' fees and costs.

Although Plaintiff is responsible for filing the motion, it is intended that the Defendant will have reviewed the motion in advance and that the motion will be unopposed.

2. **Class Notice.** Within a reasonable time after Preliminary Approval, the Notice Administrator, in cooperation with Class Counsel and defense counsel, shall send the approved Class Notices to each Settlement Class Member by U.S. mail postage prepaid in accordance with the terms of the Preliminary Approval Order. DHS shall provide the Notice Administrator (if not DHS) and Class Counsel with Contact Information for all Settlement Class Members in each Settlement Class (the "Class List").

DHS shall send to Payment Recipients and non-Payment Recipients a different form of Class Notice, depending on which category the Class Member falls into.

In the event a child was placed in the care of more than one person (e.g., a married couple) at a given time, Class Notice shall be sent to one address addressed to the person who is designated in DHS' records as the payee, i.e., the person to whom payments are made when checks are issued by DHS to that household. Notice to the one member of a two-person household shall constitute sufficient and adequate notice to the household.

The determination of who is within each Settlement Class (and therefore entitled to notice) shall be made by DHS based on the data kept by DHS in the ordinary course of its business. The Parties agree that the contents of the Class List are confidential and shall not be shared with third parties other than the Notice Administrator (if not DHS) and any vendor retained by DHS to

perform copying and mailing functions, and shall not be filed in Court unless the Court so orders.

Prior to mailing the Notices, the Notice Administrator shall process the Class List against the National Change of Address Database maintained by the United States Postal Service (“USPS”). If a Notice is returned as undeliverable, and if a forwarding address is provided by the USPS, the Notice Administrator shall re-mail the Notice within three (3) business days. If an undeliverable Notice is returned without a forwarding address, the Notice Administrator need attempt to obtain updated addresses only for Payment Recipients by using skip tracing services agreed to by Class Counsel and defense counsel. All re-mailings to skip traced Payment Recipients must be completed no later than 20 days prior to the Opt-Out deadline. Notices shall only be re-mailed once.

Reasonable Administrative Costs incurred in typesetting, printing, and mailing the Class Notice to Settlement Class Members, processing the Class List by USPS, and performing skip tracing services shall be deducted from the Class Settlement Amount.

**3. Content of Class Notice.** The Class Notice shall contain: the definitions of the certified Settlement Classes; a general description of the State Lawsuit and its claims, issues, and defenses; material terms of this proposed State Agreement including who will and will not be Payment Recipients; Class Counsel’s request for attorneys’ fees and costs; Service Awards; options available to Settlement Class Members, including the manner, time limits, forum and form of an objection to this Settlement; the right of any Settlement Class Member to enter an appearance *pro se* or through an attorney to object to the State Agreement or any of its terms; the manner, time limits, and forum and form of a request to opt out of this Settlement; the website address required to be maintained by Class Counsel; the date, time, and location of the Fairness Hearing; and the binding effect of the State Agreement on Settlement Class Members who do not opt out of the Settlement.

**4. Establishment of Website.** Class Counsel shall, at their own expense, publish information regarding the Settlement on a website, including information on how to object to or opt out of the Settlement of the State Lawsuit and the deadline to do so. The website shall also include a copy of this State Settlement Agreement, the motion for attorneys’ fees and costs including a copy of the agreement between Class Counsel and Plaintiffs, key pleadings, and information regarding the Federal Lawsuit and Federal Settlement Agreement. The web address for the website shall be included in the Class Notice. The website shall remain available starting 7 days after Preliminary Approval through December 31, 2018.

5. **Opt-Out Process.** A Settlement Class Member not wanting to participate in this Settlement and not wanting to release claims pursuant to this Settlement shall submit a valid and timely Opt-Out Letter.

a. To be valid, the Opt-Out Letter shall contain a statement which clearly conveys a request to be excluded from the Settlement Class, the individual's full name, mailing address, telephone number, and must be signed and dated.

b. To be timely, the Opt-Out Letter must be postmarked by the date indicated in the Notice, sixty (60) days after the Notice is first mailed to Settlement Class Members. However, those Settlement Class Members who are mailed a new Notice after their original Notice was returned to sender shall have until the later of 14 calendar days from the date that the new Notice was postmarked or the original opt-out deadline to submit an Opt-Out Letter. No Opt-Out Letter will be honored if postmarked after the deadline set forth in this paragraph.

All Opt-Out Letters shall be sent to Class Counsel, who shall compile a list of the persons who have validly and timely opted out and submit the list to the Court under seal prior to the Fairness Hearing, with a copy to counsel for the State. Opt-Out Letters shall be made available for inspection by Class Counsel or counsel for the State promptly upon request.

A Settlement Class Member who is entitled to a payment under this State Agreement because that person meets the definition of "Payment Recipient" but who submits an Opt-Out Letter shall not be paid, and forever waives their right to receive, a share of the Net Settlement Amount. In the event a child was placed in the care of more than one person (e.g., a married couple) at a given time, the submission of a valid and timely Opt-Out Letter by one of those persons shall constitute the submission of a valid and timely Opt-Out Letter by both persons, and both will be deemed to have waived their right to receive a share of the Net Settlement Amount.

No Opt-Out by any Settlement Class Member shall be the basis for rendering settlement of the State Lawsuit or Federal Lawsuit null and void.

6. **Objections to Settlement or to Request for Attorneys' Fees and Costs.** A Settlement Class Member who wishes to object to this State Agreement, the Settlement, to Class Counsel's request for attorneys' fees and costs, or to the Service Awards must timely file with the Clerk of the Court and serve on the Parties a statement of their objection, and whether the Settlement Class Member intends to appear at the Fairness Hearing. Settlement Class Members who are minors may submit their objections through Class Counsel, who shall file the objections under seal, and submit the substance of the objections (without identifying information) in a filed document.

Any Settlement Class Member may appear at the Fairness Hearing to object to any aspect of this State Agreement, the Settlement, or Class Counsel's motion for attorneys' fees and costs. Settlement Class Members may act either on their own or through counsel employed at their own expense.

To be considered timely, a Settlement Class Member's objection must be postmarked on or before the date that is 60 days after the Notice is first mailed to the Settlement Classes. Those Settlement Class Members who are mailed a new Notice after their original Notice was returned to sender shall have the later of 14 calendar days from the date that the new Notice was postmarked, or the original objections deadline, to submit their objections. Nothing in this paragraph requires the Notice Administrator to send a new Notice if the original Notice is returned to sender.

Settlement Class Members who fail to file and serve timely written objections or who do not appear at the Fairness Hearing and make objections shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement.

**7. Fairness Hearing.** On a date to be determined by the Court, the Court shall hold a Fairness Hearing. At the Fairness Hearing, the Parties will request that the Court:

- a. Consider any objections by Settlement Class Members;
- b. Give Final Approval to the Settlement as fair, reasonable, and adequate, and binding on those Settlement Class Members who did not validly and timely submit Opt-Out Letters.
- c. Determine the amount of the award of attorneys' fees and costs for Class Counsel;
- d. Determine the Net Settlement Amount to be distributed to Payment Recipients.

**8. Effect of Failure to Grant Final Approval.** In the event the Settlement and this State Settlement Agreement are not granted Final Approval, they shall be deemed null, void, and unenforceable and shall not be used or admissible in any subsequent proceedings against the State either in State Court or in any other judicial, arbitral, administrative, investigative, or other forum; trial in the Federal Lawsuit shall commence, and the State Lawsuit shall proceed. In the event the Settlement and this State Settlement Agreement are not approved by the Court, or otherwise fail to become effective and enforceable, the State will not be deemed to have waived, limited, or affected in any way its objections or defenses to the State Lawsuit.

9. **Court Enforcement:** The State Court retains jurisdiction to enforce the terms of this State Settlement Agreement.

## **VIII. Distribution Process**

1. No claim form shall be required of Payment Recipients to be entitled to payments. Their entitlement to a settlement payment shall be based on DHS' records and eligibility under the definition of "Payment Recipients" set forth herein, provided they do not submit a valid and timely Opt-Out Letter.

2. Payments to Payment Recipients as provided in this State Settlement Agreement shall be dispersed by the State by check within a reasonable time after the funds are appropriated and allotted, if the funds to be paid under this State Agreement are appropriated, bearing in mind the overall number of checks that must be processed and the time of year, shortly after the start of the new state fiscal year. Payments may be processed in manageable batches, rather than all at once.

3. Likewise, payment to Class Counsel of attorneys' fees and costs that have been approved by the Court shall be dispersed by the State within a reasonable time after the funds have been appropriated, bearing in mind the overall number of checks to be processed for this Settlement and the time of year, shortly after the start of the new state fiscal year. Class Counsel shall deliver to counsel for the State written instructions signed by Class Counsel (by an authorized representative of each law firm) that describe to whom a check for attorneys' fees and costs shall be made payable, and a fully-executed Form W-9 with respect to the entity to whom the attorneys' fees and costs shall be paid (along with other documents or information the Department of Accounting and General Services may require to lawfully effectuate the payment). The State will issue to Class Counsel an IRS Form 1099 for such amounts paid for attorneys' fees and costs under this Settlement. If there is a reduction in the amount of attorneys' fees and/or costs sought by or awarded to Class Counsel, any such reduction shall revert to the Net Settlement Fund.

4. No later than 14 days after the Net Settlement Fund is distributed by the initial mailing of checks to Payment Recipients (whether or not the payment checks are received by or negotiated by Payment Recipients), the Parties will submit to the Court a stipulated dismissal with prejudice, which shall include a dismissal of Named Plaintiff T.B.'s claims, including any claims that are asserted on behalf of a putative class of beneficiaries, which class will not be certified.

5. No interest shall accrue on any payments to be made under this State Settlement Agreement.

## **IX. Additional Provisions**

1. The rule of construction that an agreement is to be construed against the drafting party is not to be applied in interpreting this State Settlement Agreement. The Parties acknowledge that they have read this State Agreement, that they understand its meaning and intent, that they have executed it voluntarily and with opportunity to consult with legal counsel, and have participated and had an equal opportunity to participate in the drafting and approval of drafting of this State Settlement Agreement. No ambiguity shall be construed against any party based upon a claim that the party drafted the ambiguous language. This State Agreement contains all essential terms of the settlement the Parties have reached. While other documents may be prepared hereafter to further effectuate the provisions hereof, the Parties intend that this State Settlement Agreement is a valid, binding agreement, enforceable by the Court.

2. **Cooperation Between the Parties.** The Parties shall cooperate fully with each other and shall use their best efforts to obtain the Court's approval of this State Settlement Agreement and all of its terms.

3. **No Third-Party Beneficiaries.** This Agreement shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation or undertaking established herein to any third party as a beneficiary of this State Settlement Agreement.

4. The respective signatories to this State Settlement Agreement each represent that they are fully authorized to enter into this State Agreement and bind the respective Parties to its terms and conditions. This Agreement may be executed in counterparts.

## **SIGNATURES**

Wherefore, intending to be legally bound in accordance with the terms of this State Agreement, the Parties hereby execute this State Agreement, effective on \_\_\_\_\_, 2017, which is the date on which the last signatory signed this State Agreement.

### **FOR PLAINTIFFS:**

  
Alston Hunt Floyd & Ing,  
Class Counsel

Hawai'i Appleseed,  
Class Counsel

### **FOR DEFENDANT:**

\_\_\_\_\_  
Donna H. Kalama  
Caron M. Inagaki  
Deputy Attorneys General

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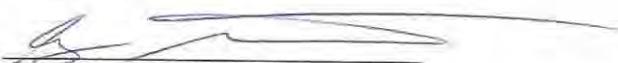
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### **FOR PLAINTIFFS:**

Alston Hunt Floyd & Ing,  
Class Counsel

  
Hawai'i Appleseed,  
Class Counsel

### **FOR DEFENDANT:**

Donna H. Kalama  
Caron M. Inagaki  
Deputy Attorneys General

**FIRST CIRCUIT COURT FOR THE STATE OF HAWAII**

*A state court authorized this notice. This is not a solicitation from a lawyer.*

## **NOTICE OF PROPOSED SETTLEMENT AND HEARING**

**If you received foster board payments, permanency assistance, adoption assistance, or higher education payments in the past, this class action settlement affects you.**

- The proposed settlement resolves a lawsuit over how much the State of Hawaii has paid in the past for basic board payments for foster care, permanency assistance, adoption assistance, and higher education payments.
- The proposed settlement will provide a \$2.3 million fund that will be used in part to make payments to persons who were resource caregivers (foster parents), legal guardians/permanent custodians, adoptive parents of children with special needs, and former foster youth who received higher education payments between July 1, 2013 and June 30, 2014. The \$2.3 million fund will also be used to pay court-appointed lawyers fees for investigating the facts, litigating the case, and negotiating the settlement, and to pay certain costs to administer the settlement.
- There are some persons who are affected by the settlement but will not be receiving a payment. DHS' records identify you as one of those persons.
- The purpose of this notice is: (1) to tell you about the proposed settlement and the fairness hearing; (2) to tell you how to obtain more information, including a copy of the full proposed settlement agreement; and (3) to explain how you may object to the proposed settlement if you disagree with it, or exclude yourself from the settlement if you do not want to be part of it.
- There is a separate federal lawsuit that focuses on how much DHS should be paying for foster care and how and when DHS should increase foster care payments in the future. It has also settled. If you are affected by the federal lawsuit, you will receive a separate notice about your rights in that case.
- The Court in charge of this case must still decide whether to approve the proposed settlement. If you have concerns about the terms of the proposed settlement, you may submit objections to the Court. Your rights and options—**and the deadlines to exercise them**—are explained in this notice.

**YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS NOTICE CAREFULLY.**

**QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiclassaction.com/fostercare>**

Your Legal Rights and Options in this Settlement:	
<b>Do Nothing</b>	If you do nothing, you will be part of the settlement, which means you are giving up any claims you could have brought against the State that were made part of this lawsuit.
<b>EXCLUDE YOURSELF/OPT OUT</b>	You may ask to be excluded from the settlement class. This is the only option that allows you to ever be part of any other lawsuit against the State about the legal claims made in this case.
<b>OBJECT</b>	Write to the Court about why you don't like the settlement.
<b>GO TO A HEARING</b>	Ask to speak in Court about the fairness of the settlement.

## BASIC INFORMATION

### 1. Why did I get this notice?

You received this notice because you were either:

- A resource caregiver (foster parent), legal guardian/permanent custodian, or adoptive parent of an adoptive child with special needs receiving payments from DHS between August 7, 2012, and February 28, 2017; or
- A former foster youth receiving higher education payments from DHS between August 7, 2012, and February 28, 2017.

A Court authorized this notice because you have a right to know about a proposed settlement of a class action lawsuit, and about your options, **before** the Court decides whether to approve the settlement. If the Court approves it after any objections and appeals are resolved, the State will make the payments that the settlement allows if the funds are provided by the Hawaii Legislature. Not everyone affected by the settlement will receive payments.

This notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

Judge Virginia Lea Crandall, of the First Circuit Court, State of Hawaii (the State Court), is currently overseeing this case. The case is known as *Sheehey v. State of Hawaii*, Civ. No. 14-1-1709-08 VLC.

### 2. What is this lawsuit about?

Plaintiffs filed a lawsuit claiming that the State did not pay enough for monthly foster care maintenance payments, permanency assistance, adoption assistance, and higher education payments. They claimed that the payments were too low under federal law, under state law, under the Department of Human Services' administrative rules, and under the terms of agreements between resource caregivers and DHS. Plaintiffs believe they are entitled to payment for damages they suffered, equal to the shortfall between the amounts DHS should have paid, and the amounts DHS actually paid.

The State denies that its payments were inadequate or that it owes Plaintiffs any compensation.

### 3. Why is this a class action?

In a class action lawsuit, one or more people called Class Representatives sue on behalf of people who have similar claims. All the people with similar claims are called the Class and

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are referred to individually as Class Members. The Court resolves the issues for everyone in the Class, except for those people who exclude themselves from the Class. There are two Classes in this case. They are described below. The Classes are represented by court-appointed lawyers called Class Counsel.

Because DHS' foster care maintenance payment rates affect a large group of people (foster parents, permanent custodians/legal guardians, parents who adopted children from foster care, young adults receiving higher education payments, and children in DHS' child welfare system), Raynette Ah Chong, Sherry Campagna, Michael Holm and Tiare Holm, Patrick Sheehey and Patricia Sheehey, Brittany Sakai, and T.B., a minor (collectively, the Named Plaintiffs) filed this case as a proposed class action.

#### **4. Why is there a Settlement?**

In any litigation, the outcome is uncertain. The Court did not decide the case in favor of Plaintiffs or DHS. However, there is a separate lawsuit in federal court that is related to this state court lawsuit. The federal lawsuit is also a class action, but it focuses on how much DHS **should pay** for foster care maintenance payments in the future, while this lawsuit focuses on how much DHS has **paid in the past** for foster care and other care. Although the two lawsuits focus on different time periods, there were overlapping issues such as, DHS' process for setting payments and making payments, and the different types of payments DHS makes. Because of the overlap, this state lawsuit was put on hold while the federal lawsuit was vigorously litigated by both sides.

The federal judge made some intermediate rulings that potentially impacted the state case. The federal court ruled that federal law did not prohibit DHS' system of providing foster care maintenance payments through a series of separate payments (the basic board rate, plus a clothing allowance, plus certain other payments and benefits). The federal court also ruled that the alleged requirement under federal law that DHS cover the cost of (and cost of providing) shelter does not mean that DHS must pay for mortgage payments, rent, property taxes, or other similar fixed costs that a resource family incurs even when they don't have a foster child in their home. Because rent and mortgage payments in Hawai'i can be higher than other areas in the United States, this ruling was not favorable for Plaintiffs' argument that DHS should have been paying increased basic board rates.

Plaintiffs in both cases believe their claims are valid, that DHS does not pay adequate foster board rates, that DHS has not increased the basic board rate even as the cost of living in Hawai'i has increased, and that the federal judge's ruling is wrong and would be reversed on appeal. The State believes strongly in its position that the federal judge was correct and the rulings would be upheld on appeal, and that none of the Plaintiffs would have won anything from a trial.

Because of the substantial risks and delays of continued litigation—including the possibility that the Lawsuits, if not settled now, might result in an outcome that is less favorable or that a fair and final judgment may not occur for several years—Plaintiffs and Class Counsel have determined that the Settlement is in the best interests of all Class Members.

Information about the claims, the federal court's rulings, and the impact of those rulings on this case are described in a document titled State Lawsuit Class Action Settlement Agreement, which can be obtained from a website created and maintained by Class Counsel at [\*\*http://www.hawaiiclassaction.com/fostercare\*\*](http://www.hawaiiclassaction.com/fostercare). Other documents from the State Lawsuit and Federal Lawsuit and updates about the Settlement are also available on that website.

**QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiclassaction.com/fostercare>**

## WHO IS IN THE SETTLEMENT

If you have received this notice, DHS' records indicate that you fall within at least one of the Classes and are therefore part of the settlement unless you take steps to opt out.

### 5. Who are the Members of the Settlement Classes?

Judge Crandall has decided that the people who fit these descriptions are Members of Settlement Class 1 and 2, respectively:

**Settlement Class 1 – Parent Settlement Class:** (a) all licensed resource caregivers in Hawaii (foster parents) who received monthly foster care maintenance payments from DHS from August 7, 2012 through February 28, 2017; and (b) all legal guardians and permanent custodians who received monthly permanency assistance from DHS from August 7, 2012 through February 28, 2017; and (c) all adoptive parents of children with special needs who received monthly adoption assistance payments from DHS from August 7, 2012 through February 28, 2017.

The Class Representatives of the Parent Settlement Class are Patrick Sheehey, Patricia Sheehey, Raynette Nalani Ah Chong, Sherry Campagna, Michael Holm, and Tiare Holm.

**Settlement Class 2 – Higher Education Settlement Class:** all individuals who received monthly higher education payments from DHS from August 7, 2012 through February 28, 2017.

The Class Representative of the Higher Education Settlement Class is Brittany Sakai.

All Class Members will be bound by the settlement unless they exclude themselves. The process for excluding yourself from the settlement and the lawsuit, also called "opting out," is described below (see Question 18). Not all Class Members will receive payments under this settlement.

### 6. What Class or Classes am I a member of?

If you were a resource caregiver (foster parent), an adoptive parent of a former foster child, or a legal guardian/permanent custodian, who received payments from DHS between August 7, 2012, and February 28, 2017, then you are a member of Settlement Class 1 – the Parent Settlement Class.

If you are a former foster youth who received higher education program benefits between August 7, 2012, and February 28, 2017, then you are a member of Settlement Class 2 – the Higher Education Settlement Class.

DHS' records show that you are a member of at least one of these classes. Therefore, if you received this notice, you will be part of the Settlement unless you opt out.

## **7. Who is entitled to payments under the settlement?**

To be entitled to a monetary payment, a Class Member must be in Settlement Classes 1 or 2, and must have received one or more of these types of payments from DHS for the time period July 1, 2013 to June 30, 2014:

- monthly foster board payments for foster children in your care
- monthly adoption assistance for your adoptive children with special needs
- monthly permanency assistance for children in your legal guardianships/permanent custody
- monthly higher education board allowance (must have been an eligible former foster youth)

Settlement Class Members who are entitled to monetary benefits under the proposed settlement are referred to in the settlement as Payment Recipients.

## **THE SETTLEMENT BENEFITS**

### **8. What does the Settlement provide?**

The State has agreed to provide \$2,341,103.10 (Total Settlement Amount) to be divided among the Payment Recipients and to pay for Class Counsel's attorneys' fees and costs and the administrative costs for carrying out the settlement.

The \$2,341,103.10 is based on \$35 per month per foster child, child in permanent custody/legal guardianship, adoptive child with special needs, and former foster youth in the higher education program, for whom DHS made monthly payments for the time period July 1, 2013 to June 30, 2014 (which is the State's 2014 fiscal year), pro rated for actual days in care. The time period represents the period right before the foster board rates were raised in July 2014. The \$35 figure was negotiated in the settlement, and represents a compromise figure preliminarily agreed to by the Class Representatives and the State.

The amount that each Payment Recipient will receive will be calculated by subtracting the amount of the costs involved in administering this settlement (for example, copying and mailing this notice to, and locating Class Members) and the attorneys' fees and costs awarded by the Court from the Total Settlement Amount of \$2,341,103.10 to arrive at a Net Settlement Amount. This Net Settlement Amount will then be distributed to Payment Recipients based on the number of days each eligible child was in care between July 1, 2013 and June 30, 2014.

### **9. Will I receive a payment under the settlement?**

Based on DHS' records, you do not meet the criteria in Question 7 and are NOT a Payment Recipient. Thus, you will not be receiving a payment under this settlement.

### **10. Why won't all Class Members receive a payment?**

This settlement is a compromise between the Plaintiffs and the State. The State strongly believes it has no liability to any of the Class Members and does not owe any of them any money. The State believes its position is supported by the rulings of the federal court. But the State is willing to provide some money to some of the Plaintiffs as a way to bring an end

**QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiclassaction.com/fostercare>**

to the case rather than continue to litigate. Plaintiffs strongly believe the State should be paying more to all of the Class Members, but also understand there are serious risks in continuing to litigate this case, including the possibility that none of the Class Members may get anything. Based on the federal court's rulings, and the risks inherent in any lawsuit, the Class Representatives and Class Counsel believe the compromise is fair.

Even if you are not a Payment Recipient, as a member of one or more Settlement Classes, you are bound by the settlement and give up the right to sue the State for the claims that are covered by the settlement and the lawsuit, unless you opt out of the settlement.

## **11. Are there any conditions to this Settlement?**

This settlement will not become final until the Court approves this settlement, the federal court approves the settlement of the federal lawsuit, and the Hawaii Legislature approves the money that will be needed to pay for both settlements. If the Legislature does not approve the money needed to pay for both settlements, the settlement will not go forward, and the Plaintiffs in the Federal Lawsuit will go to trial.

### **BEING PART OF THE SETTLEMENT**

## **12. Do I need to do anything to be a part of the settlement?**

No. You do not have to do anything to be part of the Classes.

## **13. When will payments be made to Payment Recipients?**

The Court will hold a hearing on March 24, 2017, to decide whether to preliminarily approve the settlement and a Fairness Hearing on June 23, 2017, to finalize the settlement. If the presiding Judge approves the settlement, after that, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them takes time, perhaps more than a year. The Hawaii legislature must also approve the funding for the payments. The legislative process lasts several months.

## **14. Do I give up anything if I am part of the settlement?**

Yes. Unless you exclude yourself, you are staying in the Class and will be part of the settlement even if you don't get a payment, which means you can't sue, continue to sue, or be part of any other lawsuit against the State about the legal issues in *this* case. It also means that all of the Court's orders will apply to you and legally bind you.

### **THE LAWYERS REPRESENTING YOU**

## **15. Do I have lawyers in the case?**

Yes. The Court has appointed lawyers to represent you and other Class Members. These lawyers are called Class Counsel. Their names are:

**QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiclassaction.com/fostercare>**

Paul Alston Anderson Meyer Michelle Comeau Claire Wong Black Alston Hunt Floyd & Ing 1001 Bishop Street, Suite 1800 Honolulu, HI 96813	Victor Geminiani Gavin Thornton Hawaii Appleseed Center for Law and Economic Justice 119 Merchant Street, Suit 605 Honolulu, HI 96813
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You will not be charged personally for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own personal expense.

## 16. How will the lawyers be paid? Does the Class Representative get paid?

Class Counsel's fee agreement allows them to ask for up to 25% of any recovery on behalf of the Class Members. However, Class Counsel will ask the Court to approve payment of 20% of the Total Settlement Amount to them for attorneys' fees and costs. The fees and costs would pay Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. The Court may award less than these amounts. The attorneys' fees and costs will be deducted from the \$2,341,103.10. The State has agreed not to oppose these fees and costs.

The Court is not bound by any agreed upon or requested amounts. You may object to Class Counsel's request for attorneys' fees and costs. After considering the objections of Class Members, the Court will determine the amount of attorneys' fees and costs in accordance with controlling law.

The expenses to administer the settlement (for example, the cost to mail out this notice) will also be deducted from the \$2,341,103.10. It is estimated that the administrative expenses will be approximately \$18,357.14.

Class Counsel have reserved the right to provide Service Awards for the Named Plaintiffs. These Service Awards are intended to recognize the Named Plaintiffs for the extensive services they performed for the class, the time they spent on this case, and the risks they assumed in connection with this litigation. The amount of the Service Awards, if any, will be deducted from any award of attorneys' fees and costs by the Court to Class Counsel. In other words, the Service Award will reduce the amount of money going to Class Counsel, **NOT** the amount of payments to Class Members.

## OBJECTING TO THE SETTLEMENT

### 17. How can I object to the Settlement?

You may object to the settlement if you don't like any part of it. This includes the attorneys' fees and cost request for Class Counsel. The Court will consider your views.

To object, you must send a letter saying that you object to *Sheehey v. State*, Civ. No. 14-1-1709-08 VLC. Be sure to include your name, address, telephone number, your signature, the date, and the reasons you object to the settlement. Mail your objection to the following address postmarked no later than \_\_\_\_\_, **2017**:

**QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiclassaction.com/fostercare>**

Sheehey Objections

\_\_\_\_\_  
Honolulu, HI \_\_\_\_\_

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you don't want to be a part of this settlement, then you must take steps to exclude yourself from the settlement. This is sometimes referred to as "opting out" of the Settlement Class. Opting out means that you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue the State in the future.

### **18. How do I get out of the settlement?**

To exclude yourself from the settlement, you must send a letter by mail saying that you want to be excluded from or opt out of this case. Be sure to include your name, address, telephone number, your signature, and the date. Include the name of the case, *Sheehey v. State*, Civ. No. 14-1-1709-08 VLC. You must mail your exclusion letter postmarked no later than **Month 00, 2017** to:

Sheehey Exclusions

\_\_\_\_\_  
Honolulu, HI \_\_\_\_\_

If you ask to be excluded, you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue the State in the future.

### **19. If I don't exclude myself, can I sue the State for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue the State for the claims that this settlement resolves. If you have a pending lawsuit that asserts the same or similar claims, speak to your lawyer immediately. You must exclude yourself from *this* Settlement Class to continue your own lawsuit. Remember, the exclusion deadline is **Month 00, 2017**.

## **THE COURT'S FAIRNESS HEARING**

The Court will hold a hearing, called a Fairness Hearing, to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

### **20. When and where will the Court decide whether to approve the settlement?**

The Court will hold a Fairness Hearing at 9:00 a.m. on June 23, 2017, at the Circuit Court for the First Circuit, 777 Punchbowl Street, Honolulu, Hawaii, in Courtroom \_\_\_. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Judge will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take. The hearing may be moved to a different date, time, or

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courtroom without additional notice, so it is a good idea to visit <http://www.hawaiiclassaction.com/fostercare> for updates.

## **21. Do I have to come to the Fairness Hearing?**

No. Class Counsel will answer questions the Judge may have. But you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend on your behalf, but it's not necessary.

## **22. May I speak at the Fairness Hearing?**

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Sheehey v. State*, Civ. No. 14-1-1709-08 VLC." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than **Month 00, 2017**, and be sent to \_\_\_\_\_, Honolulu, HI, \_\_\_\_\_. You cannot speak at the hearing if you excluded yourself.

### **IF YOU DO NOTHING**

## **23. What happens if I do nothing.**

If you do nothing, you will be part of this lawsuit, and you won't be able to be part of any other lawsuit against the State about the legal issues in *this* case, ever again.

### **GETTING MORE INFORMATION**

## **24. Are there more details about the settlement?**

This notice summarizes the proposed settlement. More details are in a State Lawsuit Class Action Settlement Agreement. You can get a copy of the Settlement Agreement at: <http://www.hawaiiclassaction.com/fostercare>. You may also send questions in writing to Class Counsel c/o Alston Hunt Floyd & Ing, 1001 Bishop Street, Suite 1800, Honolulu, Hawai'i 96813.

## **25. How do I get more information?**

You can call (808) 524-1800; write to Class Counsel at [fostercare@ahfi.com](mailto:fostercare@ahfi.com) or at Alston Hunt Floyd & Ing, 1001 Bishop Street, Suite 1800, Honolulu, Hawai'i 96813; or visit the website: <http://www.hawaiiclassaction.com/fostercare> where you will find other information about the State Lawsuit, Federal Lawsuit, and the settlement.

### **PLEASE DO NOT CALL THE COURT WITH YOUR QUESTIONS**

[DATE]

**QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiclassaction.com/fostercare>**

FIRST CIRCUIT COURT FOR THE STATE OF HAWAII

*A state court authorized this notice. This is not a solicitation from a lawyer.*

## **NOTICE OF PROPOSED SETTLEMENT AND HEARING**

**If you received foster board payments, permanency assistance, adoption assistance, or higher education payments in the past, you may be eligible for a payment from a class action settlement.**

- The proposed settlement resolves a lawsuit over how much the State of Hawaii has paid in the past for basic board payments for foster care, permanency assistance, adoption assistance, and higher education payments.
- The proposed settlement will provide a \$2.3 million fund that will be used in part to make payments to persons who were resource caregivers (foster parents), legal guardians/permanent custodians, adoptive parents of children with special needs, and former foster youth who received higher education payments between July 1, 2013 and June 30, 2014. Other people are affected by this settlement but will not receive payments from the \$2.3 million fund. The \$2.3 million fund will also be used to pay court-appointed lawyers fees for investigating the facts, litigating the case, and negotiating the settlement, and to pay certain costs to administer the settlement.
- The payments proposed in the settlement will not be made unless the Court approves the settlement *and* the Hawaii legislature funds the payments.
- The purpose of this notice is: (1) to tell you about the proposed settlement and the fairness hearing; (2) to tell you how to obtain more information, including a copy of the full proposed settlement agreement; and (3) to explain how you may object to the proposed settlement if you disagree with it, or exclude yourself from the settlement if you do not want to be part of it.
- There is a separate federal lawsuit that focuses on how much DHS should be paying for foster care and how and when DHS should increase foster care payments in the future. It has also settled. If you are affected by the federal lawsuit, you will receive a separate notice about your rights in that case.
- The Court in charge of this case must still decide whether to approve the proposed settlement. If you have concerns about the terms of the proposed settlement, you may submit objections to the Court. Your rights and options—**and the deadlines to exercise them**—are explained in this notice.

**YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS NOTICE CAREFULLY.**

**QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiclassaction.com/fostercare>**

Your Legal Rights and Options in this Settlement:	
<b>DO NOTHING</b>	If you do nothing, you will be part of the settlement, which means you are giving up any claims you could have brought against the State that were made part of this lawsuit.  If you fall within the category of people who are entitled to receive a payment, you will automatically receive a payment. You do not have to submit a claim.
<b>EXCLUDE YOURSELF/OPT OUT</b>	You may ask to be excluded from the settlement class. This is the only option that allows you to ever be part of any other lawsuit against the State about the legal claims made in this case. If you would have received a payment under the settlement, you will not receive that payment if you exclude yourself.
<b>OBJECT</b>	Write to the Court about why you don't like the settlement.
<b>GO TO A HEARING</b>	Ask to speak in Court about the fairness of the settlement.

## BASIC INFORMATION

### 1. Why did I get this notice?

You received this notice because you were either:

- A resource caregiver (foster parent), legal guardian/permanent custodian, or adoptive parent of an adoptive child with special needs receiving payments from DHS between August 7, 2012, and February 28, 2017; or
- A former foster youth receiving higher education payments from DHS between August 7, 2012, and February 28, 2017.

A Court authorized this notice because you have a right to know about a proposed settlement of a class action lawsuit, and about your options, **before** the Court decides whether to approve the settlement. If the Court approves it after any objections and appeals are resolved, the State will make the payments that the settlement allows if the funds are provided by the Hawaii Legislature. Not everyone affected by the settlement will receive payments.

This notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

Judge Virginia Lea Crandall, of the First Circuit Court, State of Hawaii (the State Court), is currently overseeing this case. The case is known as *Sheehey v. State of Hawaii*, Civ. No. 14-1-1709-08 VLC.

### 2. What is this lawsuit about?

Plaintiffs filed a lawsuit claiming that the State did not pay enough for monthly foster care maintenance payments, permanency assistance, adoption assistance, and higher education payments. They claimed that the payments were too low under federal law, under state law, under the Department of Human Services' administrative rules, and under the terms of agreements between resource caregivers and DHS. Plaintiffs believe they are entitled to payment for damages they suffered, equal to the shortfall between the amounts DHS should have paid, and the amounts DHS actually paid.

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The State denies that its payments were inadequate or that it owes Plaintiffs any compensation.

### **3. Why is this a class action?**

In a class action lawsuit, one or more people called Class Representatives sue on behalf of people who have similar claims. All the people with similar claims are called the Class and are referred to individually as Class Members. The Court resolves the issues for everyone in the Class, except for those people who exclude themselves from the Class. There are two Classes in this case. They are described below. The Classes are represented by court-appointed lawyers called Class Counsel.

Because DHS' foster care maintenance payment rates affect a large group of people (foster parents, permanent custodians/legal guardians, parents who adopted children from foster care, young adults receiving higher education payments, and children in DHS' child welfare system), Raynette Ah Chong, Sherry Campagna, Michael Holm and Tiare Holm, Patrick Sheehey and Patricia Sheehey, Brittany Sakai, and T.B., a minor (collectively, the Named Plaintiffs) filed this case as a proposed class action.

### **4. Why is there a Settlement?**

In any litigation, the outcome is uncertain. The Court did not decide the case in favor of Plaintiffs or DHS. However, there is a separate lawsuit in federal court that is related to this state court lawsuit. The federal lawsuit is also a class action, but it focuses on how much DHS **should pay** for foster care maintenance payments in the future, while this lawsuit focuses on how much DHS has **paid in the past** for foster care and other care. Although the two lawsuits focus on different time periods, there were overlapping issues such as, DHS' process for setting payments and making payments, and the different types of payments DHS makes. Because of the overlap, this state lawsuit was put on hold while the federal lawsuit was vigorously litigated by both sides.

The federal judge made some intermediate rulings that potentially impacted the state case. The federal court ruled that federal law did not prohibit DHS' system of providing foster care maintenance payments through a series of separate payments (the basic board rate, plus a clothing allowance, plus certain other payments and benefits). The federal court also ruled that the alleged requirement under federal law that DHS cover the cost of (and cost of providing) shelter does not mean that DHS must pay for mortgage payments, rent, property taxes, or other similar fixed costs that a resource family incurs even when they don't have a foster child in their home. Because rent and mortgage payments in Hawai'i can be higher than other areas in the United States, this ruling was not favorable for Plaintiffs' argument that DHS should have been paying increased basic board rates.

Plaintiffs in both cases believe their claims are valid, that DHS does not pay adequate foster board rates, that DHS has not increased the basic board rate even as the cost of living in Hawai'i has increased, and that the federal judge's ruling is wrong and would be reversed on appeal. The State believes strongly in its position that the federal judge was correct and the rulings would be upheld on appeal, and that none of the Plaintiffs would have won anything from a trial.

Because of the substantial risks and delays of continued litigation—including the possibility that the Lawsuits, if not settled now, might result in an outcome that is less favorable or that a fair and final judgment may not occur for several years—Plaintiffs and Class Counsel have determined that the Settlement is in the best interests of all Class Members.

**QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiclassaction.com/fostercare>**

Information about the claims, the federal court's rulings, and the impact of those rulings on this case are described in a document titled State Lawsuit Class Action Settlement Agreement, which can be obtained from a website created and maintained by Class Counsel at <http://hawaiiclassaction.com/fostercare>. Other documents from the State Lawsuit and Federal Lawsuit and updates about the Settlement are also available on that website.

## **WHO IS IN THE SETTLEMENT**

If you have received this notice, DHS' records indicate that you fall within at least one of the Classes and are therefore part of the settlement unless you take steps to opt out.

### **5. Who are the Members of the Settlement Classes?**

Judge Crandall has decided that the people who fit these descriptions are Members of Settlement Class 1 and 2, respectively:

**Settlement Class 1 – Parent Settlement Class:** (a) all licensed resource caregivers in Hawaii (foster parents) who received monthly foster care maintenance payments from DHS from August 7, 2012 through February 28, 2017; and (b) all legal guardians and permanent custodians who received monthly permanency assistance from DHS from August 7, 2012 through February 28, 2017; and (c) all adoptive parents of children with special needs who received monthly adoption assistance payments from DHS from August 7, 2012 through February 28, 2017.

The Class Representatives of the Parent Settlement Class are Patrick Sheehey, Patricia Sheehey, Raynette Nalani Ah Chong, Sherry Campagna, Michael Holm, and Tiare Holm.

**Settlement Class 2 – Higher Education Settlement Class:** all individuals who received monthly higher education payments from DHS from August 7, 2012 through February 28, 2017.

The Class Representative of the Higher Education Settlement Class is Brittany Sakai.

All Class Members will be bound by the settlement unless they exclude themselves. The process for excluding yourself from the settlement and the lawsuit, also called "opting out," is described below (see Question 18). Not all Class Members will receive payments under this settlement.

### **6. What Class or Classes am I a member of?**

If you were a resource caregiver (foster parent), an adoptive parent of a former foster child, or a legal guardian/permanent custodian, who received payments from DHS between August 7, 2012, and February 28, 2017, then you are a member of Settlement Class 1 – the Parent Settlement Class.

If you are a former foster youth who received higher education program benefits between August 7, 2012, and February 28, 2017, then you are a member of Settlement Class 2 – the Higher Education Settlement Class.

DHS' records show that you are a member of at least one of these classes. Therefore, if you received this notice, you will be part of the Settlement unless you opt out.

**QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiclassaction.com/fostercare>**

The Class Members who are also entitled to a payment are called Payment Recipients. To determine if you are a Payment Recipient, see Questions 7 and 9 below.

## **7. Who is entitled to payments under the settlement?**

To be entitled to a monetary payment, you must be in Settlement Classes 1 or 2, **and** you must have received one or more of these types of payments from DHS for the time period July 1, 2013 to June 30, 2014:

- monthly foster board payments for foster children in your care
- monthly adoption assistance for your adoptive children with special needs
- monthly permanency assistance for children in your legal guardianships/permanent custody
- monthly higher education board allowance (must have been an eligible former foster youth)

## **THE SETTLEMENT BENEFITS – WHAT YOU GET**

### **8. What does the Settlement provide?**

The State has agreed to provide \$2,341,103.10 (Total Settlement Amount) to be divided among the Payment Recipients and to pay for Class Counsel's attorneys' fees and costs and the administrative costs for carrying out the settlement.

The \$2,341,103.10 is based on \$35 per month per foster child, child in permanent custody/legal guardianship, adoptive child with special needs, and former foster youth in the higher education program, for whom DHS made monthly payments for the time period July 1, 2013 to June 30, 2014 (which is the State's 2014 fiscal year), pro rated for actual days in care. The time period represents the period right before the foster board rates were raised in July 2014. The \$35 figure was negotiated in the settlement, and represents a compromise figure preliminarily agreed to by the Class Representatives and the State.

The amount that each Payment Recipient will receive will be calculated by subtracting the amount of the costs involved in administering this settlement (for example, copying and mailing this notice to, and locating Class Members) and the attorneys' fees and costs awarded by the Court from the Total Settlement Amount of \$2,341,103.10 to arrive at a Net Settlement Amount. This Net Settlement Amount will then be distributed to Payment Recipients based on the number of days each eligible child was in care between July 1, 2013 and June 30, 2014.

### **9. Will I receive a payment under the settlement?**

Based on DHS' records, you are a Payment Recipient. We cannot estimate the actual payment amount to each Payment Recipient because the Administrative Costs and attorneys' fees have not yet been determined. The actual amount of your payment will be determined at a later time.

### **10. Why won't all Class Members receive a payment?**

This settlement is a compromise between the Plaintiffs and the State. The State strongly believes it has no liability to any of the Class Members and does not owe any of them any

**QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiclassaction.com/fostercare>**

money. The State believes its position is supported by the rulings of the federal court. But the State is willing to provide some money to some of the Plaintiffs as a way to bring an end to the case rather than continue to litigate. Plaintiffs strongly believe the State should be paying more to all of the Class Members, but also understand there are serious risks in continuing to litigate this case, including the possibility that none of the Class Members may get anything. Based on the federal court's rulings, and the risks inherent in any lawsuit, the Class Representatives and Class Counsel believe the compromise is fair.

Even if you are not a Payment Recipient, as a member of one or more Settlement Classes, you are bound by the settlement and give up the right to sue the State for the claims that are covered by the settlement and the lawsuit, unless you opt out of the settlement.

## **11. Are there any conditions to this Settlement?**

This settlement will not become final until the Court approves this settlement, the federal court approves the settlement of the federal lawsuit, and the Hawaii Legislature approves the money that will be needed to pay for both settlements. If the Legislature does not approve the money needed to pay for both settlements, the settlement will not go forward, and the Plaintiffs in the Federal Lawsuit will go to trial.

### **BEING PART OF THE SETTLEMENT**

## **12. Do I need to do anything to be a part of the settlement?**

No. You do not have to do anything to be part of the Classes or to get a payment if you are a Payment Recipient. If you are a Payment Recipient, your payment amount will be calculated for you and sent to you by mail. A claim form is not required.

## **13. If I am a Payment Recipient when will I get my payment?**

The Court will hold a hearing on March 24, 2017, to decide whether to preliminarily approve the settlement and a Fairness Hearing on June 23, 2017, to finalize the settlement. If the presiding Judge approves the settlement, after that, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them takes time, perhaps more than a year. The Hawaii legislature must also approve the funding for the payments. The legislative process lasts several months. Please be patient.

## **14. Do I give up anything if I am part of the settlement?**

Yes. Unless you exclude yourself, you are staying in the Class and will be part of the settlement even if you don't get a payment, which means you can't sue, continue to sue, or be part of any other lawsuit against the State about the legal issues in *this* case. It also means that all of the Court's orders will apply to you and legally bind you.

### **THE LAWYERS REPRESENTING YOU**

## **15. Do I have lawyers in the case?**

Yes. The Court has appointed lawyers to represent you and other Class Members. These lawyers are called Class Counsel. Their names are:

**QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiclassaction.com/fostercare>**

Paul Alston Anderson Meyer Michelle N. Comeau Claire Wong Black Alston Hunt Floyd & Ing 1001 Bishop Street, Suite 1800 Honolulu, HI 96813	Victor Geminiani Gavin Thornton Hawaii Appleseed Center for Law and Economic Justice 119 Merchant Street, Suit 605 Honolulu, HI 96813
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You will not be charged personally for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own personal expense.

## **16. How will the lawyers be paid? Does the Class Representative get paid?**

Class Counsel's fee agreement allows them to ask for up to 25% of any recovery on behalf of the Class Members. However, Class Counsel will ask the Court to approve payment of 20% of the Total Settlement Amount to them for attorneys' fees and costs. The fees and costs would pay Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. The Court may award less than these amounts. The attorneys' fees and costs will be deducted from the \$2,341,103.10. The State has agreed not to oppose these fees and costs.

The Court is not bound by any agreed upon or requested amounts. You may object to Class Counsel's request for attorneys' fees and costs. After considering the objections of Class Members, the Court will determine the amount of attorneys' fees and costs in accordance with controlling law.

The expenses to administer the settlement (for example, the cost to mail out this notice) will also be deducted from the \$2,341,103.10. It is estimated that the administrative expenses will be approximately \$18,357.14.

Class Counsel have reserved the right to provide Service Awards for the Named Plaintiffs. These Service Awards are intended to recognize the Named Plaintiffs for the extensive services they performed for the class, the time they spent on this case, and the risks they assumed in connection with this litigation. The amount of the Service Awards, if any, will be deducted from any award of attorneys' fees and costs by the Court to Class Counsel. In other words, the Service Award will reduce the amount of money going to Class Counsel, **NOT** the amount of payments to Class Members.

## **OBJECTING TO THE SETTLEMENT**

### **17. How can I object to the Settlement?**

You may object to the settlement if you don't like any part of it. This includes the attorneys' fees and cost request for Class Counsel. The Court will consider your views.

To object, you must send a letter saying that you object to *Sheehey v. State*, Civ. No. 14-1-1709-08 VLC. Be sure to include your name, address, telephone number, your signature, the date, and the reasons you object to the settlement. Mail your objection to the following address postmarked no later than **Month 00, 2017**:

Sheehey Objections

**QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiclassaction.com/fostercare>**

Honolulu, HI \_\_\_\_\_

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you don't want to be a part of this settlement, then you must take steps to exclude yourself from the settlement. This is sometimes referred to as "opting out" of the Settlement Class. Opting out means that you will not get any settlement payment even if you would be entitled to one if you stayed in the lawsuit. You also cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue the State in the future.

### **18. How do I get out of the settlement?**

To exclude yourself from the settlement, you must send a letter by mail saying that you want to be excluded from or opt out of this case. Be sure to include your name, address, telephone number, your signature, and the date. Include the name of the case, *Sheehey v. State*, Civ. No. 14-1-1709-08 VLC. You must mail your exclusion letter postmarked no later than **Month 00, 2017** to:

Sheehey Exclusions

Honolulu, HI \_\_\_\_\_

If you ask to be excluded, you will not get any settlement payment even if you would be entitled to one if you stayed in the lawsuit. You also cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue the State in the future.

### **19. If I don't exclude myself, can I sue the State for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue the State for the claims that this settlement resolves. If you have a pending lawsuit that asserts the same or similar claims, speak to your lawyer immediately. You must exclude yourself from *this* Settlement Class to continue your own lawsuit. Remember, the exclusion deadline is **Month 00, 2017**.

## **THE COURT'S FAIRNESS HEARING**

The Court will hold a hearing, called a Fairness Hearing, to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

### **20. When and where will the Court decide whether to approve the settlement?**

The Court will hold a Fairness Hearing at 9:00 a.m. on June 23, 2017, at the Circuit Court for the First Circuit, 777 Punchbowl Street, Honolulu, Hawaii, in Courtroom \_\_\_\_\_. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Judge will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take. The hearing may be moved to a different date, time, or courtroom without additional notice, so it is a good idea to visit <http://www.hawaiiclassaction.com/fostercare> for updates.

**QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiclassaction.com/fostercare>**

## **21. Do I have to come to the Fairness Hearing?**

No. Class Counsel will answer questions the Judge may have. But you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend on your behalf, but it's not necessary.

## **22. May I speak at the Fairness Hearing?**

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Sheehey v. State*, Civ. No. 14-1-1709-08 VLC." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than **Month 00, 2017**, and be sent to \_\_\_\_\_, Honolulu, HI, \_\_\_\_\_. You cannot speak at the hearing if you excluded yourself.

### **IF YOU DO NOTHING**

## **23. What happens if I do nothing.**

If you do nothing, you will be part of this lawsuit, and you won't be able to be part of any other lawsuit against the State about the legal issues in this case, ever again. As a Payment Recipient, you will be paid your share of the Net Settlement Payment, as calculated by DHS.

### **GETTING MORE INFORMATION**

## **24. Are there more details about the settlement?**

This notice summarizes the proposed settlement. More details are in a State Lawsuit Class Action Settlement Agreement. You can get a copy of the Settlement Agreement at: <http://www.hawaiiclassaction.com/fostercare>. You may also send questions in writing to Class Counsel c/o Alston Hunt Floyd & Ing, 1001 Bishop Street, Suite 1800, Honolulu, Hawai`i 96813.

## **25. How do I get more information?**

You can call (808) 524-1800; write to Class Counsel at [fostercare@ahfi.com](mailto:fostercare@ahfi.com) or Alston Hunt Floyd & Ing, 1001 Bishop Street, Suite 1800, Honolulu, Hawai`i 96813; or visit the website: <http://www.hawaiiclassaction.com/fostercare> where you will find other information about the State Lawsuit, Federal Lawsuit, and the settlement.

[DATE]

**QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiclassaction.com/fostercare>**